UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1998/NGO/12
20 July 1998

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fiftieth session
Agenda item 4 (c)

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE QUESTION OF TRANSNATIONAL CORPORATIONS

Written statement by the Indian Movement "Tupac Amaru" and the Indigenous World Association, which are non-governmental organizations in consultative status

The Secretary-General has received the following written statement, which is distributed pursuant to Economic and Social Council resolution 1996/31.

[22 June 1998]

Written statement by the Indian Movement "Tupac Amaru" and the Indigenous World Association, which are non-governmental organizations in consultative status

CODE OF CONDUCT FOR TRANSNATIONAL CORPORATIONS

1. The concept of a "code of conduct" appears to have originated in the world of business as a way of regulating commercial disputes, and is closely linked to the shifts between the old and new international economic orders.

2. A response is now needed to the challenges posed by the inexorable advance of globalization worldwide, the deregulation of the international financial system, the penetration of transnational corporations in all spheres of the world economy leading to the irrational exploitation of natural resources, the privatization of core enterprises and extreme poverty ensuing from the implementation of the structural adjustment programmes of the International Monetary Fund (IMF) and the World Bank.

3. In the context of the new international economic order, the transnational movement, as the concrete manifestation of the blind, anarchic forces of the market economy, constitutes the greatest obstacle to the effective exercise of the inherent economic, social and cultural rights of all peoples, and to the enjoyment of their basic natural resources as provided in international instruments.

4. In the face of the law of free competition - the driving force behind globalization, which sweeps away all obstacles to the unbridled determination to colonize the world, hastens the dismantling of mechanisms and rules of conduct and obstructs the economic function of the State - societies from North to South have succumbed in a world without borders, without laws and without ethical standards. After the relentless advance of the globalization of capital, the absence is being felt now more than ever before of an international legal framework that is capable of regulating the manifold activities of transnationals and their direct investments throughout the world.

5. A number of factors make the elaboration of a code of conduct for transnational corporations a matter of urgency. First, the invisible hand of powerful monopolies and holdings, which are in constant quest of profit and which, by their nature, behave irrationally and blindly, that is, without morals and outside the jurisdiction of host countries. Their prime objective consists in generating maximum profit and gain by plundering natural resources and exploiting labour.

6. Second, the demands of poor countries for the right to just and equitable development have confirmed that how impossible it is to bring such supranational activities under the control of a host country's national legislation. The host States have gradually lost their bargaining power and can no longer exercise legal jurisdiction over foreign subsidiaries operating in their territories, because their legislations often contain no reference to the term or concept of "corporate nationality", or to rules of conduct or any definition of the legal status of transnational corporations.

7. It is essential therefore firstly that the matter of the nationality of transnational corporations should be defined and secondly that clear, specific rules should be drawn up regarding the responsibility of economic entities which are subject to international law for the mutilating of mother earth, the pollution of the environment, and for exclusion and extreme poverty, all acts that are considered to be serious violations of human rights. In this sense, one way of filling the existing gaping legal vacuum in regard to transnational corporations would be to harmonize the legislation of developing countries.

8. An unprecedented legal gap has been left in countries of the former socialist camp as a result of the transition from the socialist planned economy to the market economy, from State ownership to private ownership, and from the socialist work ethic to capitalist competition. As matters stand at present, the activities and investments of oil corporations and trusts are not subject to any regulation, and there are no provisions regarding indigenous rights to land tenure and use of natural resources.

9. Since the domestic legislation of host countries neither specifies the legal status nor clearly defines the rights and duties of the supranational enterprises they are in effect neither national nor stateless, but operate through vertical links with their parent companies which effectively means that they are subject to the jurisdiction of decision-making centres located in the industrialized nations.

10. The fact that the jurisdiction of States on whose territories parent mother companies operate is unilaterally extended to their subsidiaries located in all parts of the world constitutes interference in the internal affairs of other countries. For example, under the Torricelli Amendment and the Helms-Burton Act, both of which are extraterritorial in nature, the United States Government has sought to reinforce its economic and commercial siege by prohibiting American branches and subsidiaries located in third countries from engaging in trade with Cuba.

11. Since 1989, the Working Group on Indigenous Populations, aware of the negative effects of transnational corporations and in the context of its standard-setting activities, has been urging the United Nations Centre on Transnational Corporations to assist it in "preparing a database on transnational investments and operations on indigenous peoples' lands, and in particular those lands which are currently in dispute". (E/CN.4/Sub.2/1989/36, annex I). There is no doubt that although the international community has been trying since the 1970s to draw up codes of conduct to regulate the activities of entities and enterprises in particular areas of the international economy and trade, they have produced no tangible results.

12. Pursuant to Economic and Social Council resolution 1913 (LVII) of 5 December 1974, the original idea of drawing up a code began to take form with the establishment of the Committee for Transnational Enterprises, although the Committee's mandate was not specified. The Committee held its first session in March 1974, when it decided to devote priority attention to drawing up a set of standards, which would constitute a legally binding code of conduct for transnational corporations.

13. During the Committee's third session, as might have been expected, a dispute arose between industrialized and third world countries regarding the nature and legal status of the future code. The former proposed a solemn declaration of principles in the form of recommendations, while the latter wished to give the code normative status, that is, to make it an international instrument that was legally binding on both transnational corporations and States.

14. Despite protracted heated negotiations, the government delegations were unable to reach a consensus on the nature and legal status of the future code of conduct and, in 1992, at the request of the United States of America, they agreed to drop discussion of one of the most burning issues of "industrial civilization". That senseless decision countervened the basic principles embodied in international instruments and United Nations resolutions, which urge the prompt establishment of an international legal framework for economic relations. In this connection, mention should be made of General Assembly resolutions 1803 (XVII) of 1962 entitled "Permanent Sovereignty over Natural Resources" and 3281 (XXIX) of 1974 entitled "Charter of Economic Rights and Duties of States".

15. Contrary to the provisions of these resolutions, the draft code of conduct was dropped in response to pressures exerted by economic and financial circles and more particularly as a result of the guidelines issued to Governments by the World Bank and the IMF in respect of the treatment of foreign investment, and other political and diplomatic manoeuvres employed in negotiations.

16. The Earth Summit which took place in Rio de Janeiro, Brazil, in 1992 witnessed an unprecedented offensive by the business world, in the form of conglomerates and international holdings, against anything that stood in the way of the neocolonization of the Amazon region and the exploitation of developing countries' natural resources and wealth.

17. Numerous transnational corporations mobilized to set up ephemeral NGOs on the occasion of the Summit, such as the "Global Climate Council" composed of over 40 predominantly American corporations. This organization, representing potential interests, appeared at the Rio Conference in the guise of an NGO for the obvious purpose of bringing pressure to bear on Government decisions, with the initial effect of liquidating the United Nations Centre for Transnational Enterprises. The reason was perfectly clear. In keeping with its brief, the Centre was working on a draft code of conduct, with a view to regulating the murky and illegal activities of transnationals. The industrialists' lawyers were aware that, if such a code were to be adopted, it would undoubtedly prove an obstacle to the application of the neoliberal economic doctrine, which has facilitated the inexorable advance of economic globalization, the concentration of capital and the deregulation of the international financial system, with their irreparable impact on developing countries.

18. Meanwhile, the international community, particularly environmental organizations and indigenous peoples committed to defending the Earth, to protecting the environment and to the rational use of resources, were left confused and powerless in the face of the triumph of the neoliberal and free trade policies as absolute values of the market economy.

19. In conformity with General Assembly resolution 47/212B, of 6 May 1993, on the restructuring of the United Nations, it was decided to do away with the United Nations Centre on Transnational Corporations and to replace it simply with a Division on Transnational Corporations and Investments, which under a different name is currently part of the Geneva-based UNCTAD. Its function is now limited to gathering and publishing statistical data on the flows of direct foreign investment in the world.

20. In June 1994, the Centre on Transnational Corporations submitted its fourth and final report to the Working Group on Indigenous Populations in compliance with the Sub-Commission's resolutions 1989/35 of 1 September 1989, 1990/26 of 31 August 1990, 1991/31 of 29 August 1991 and 1992/33 of 27 August 1992. The indigenous peoples of the world, who are the first victims of the negative effects of transnational capital, lamented the lack of political will on the part of States and urged the United Nations to restore the Centre on Transnational Corporations.

21. For the above reasons, and in the light of the legitimate concerns of the nations which are gradually succumbing to the dictatorship of transnational capital, the non-governmental organizations signing this declaration called on the Sub-Commission to adopt appropriate recommendations, addressed to the United Nations bodies and to the international community, for the urgent establishment of a working group or the restoration of the Centre on Transnational Corporations, with the following responsibilities:

(a) To identify the globally negative effects of transnational corporations on the enjoyment of economic, social and cultural rights;

(b) To investigate the illegal transfer of capital from poor countries to rich countries, and fraudulent and speculative operations on the stock market;

(c) To define the ownership structure of multinational corporations and their global strategies aimed at market concentration at national, regional and international levels;

(d) To examine the legality of mergers between transnational corporations and banks to form monopolies with unlimited powers, which obstruct technology transfers;

(e) To regulate the abusive use of financial mechanisms (World Bank, IMF, UNDP and other international development aid bodies) serving the interests of parent companies and their subsidiaries;

(f) To assess the interference of transnational corporations in the political life of States, through the corruption and bribery of governments, parliamentarians and the military;

(g) To determine the responsibilities of transnational corporations with respect to environmental pollution, the destruction of nature and the laundering of drug money;

(h) To compile reliable data on direct foreign investment in developing countries and on the dispossession of resources considered to be strategic for national sovereignty, and to draft a series of recommendations which could serve as a normative basis for a future code of conduct.